

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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:  
FEDERAL TRADE COMMISSION, STATE OF NEW : 20cv00706 (DLC)  
YORK, STATE OF CALIFORNIA, STATE OF :  
OHIO, COMMONWEALTH OF PENNSYLVANIA, : ORDER  
STATE OF ILLINOIS, STATE OF NORTH :  
CAROLINA, and COMMONWEALTH OF :  
VIRGINIA, :  
:

Plaintiffs, :  
:

-v- :  
:

VYERA PHARMACEUTICALS, LLC, AND :  
PHOENIXUS AG, MARTIN SHKRELI, :  
individually, as an owner and former :  
director of Phoenixus AG and a former :  
executive of Vyera Pharmaceuticals, :  
LLC, and KEVIN MULLEADY, individually, :  
as an owner and former director of :  
Phoenixus AG and a former executive of :  
Vyera Pharmaceuticals, LLC, :  
:

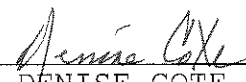
Defendants. :  
:  
----- X

DENISE COTE, District Judge:

Having received on August 18, 2021 the attached  
communication from the Ministry of Law and Justice of the  
Government of India in response to Letters of Request dated  
August 13, 2020, it is hereby

ORDERED that the communication shall be docketed.

Dated: New York, New York  
August 19, 2021

  
\_\_\_\_\_  
DENISE COTE  
United States District Judge

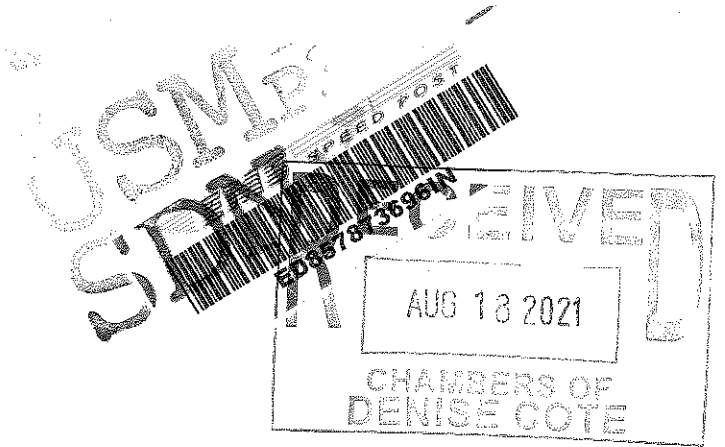


F. No. 12 (195) / 2020 Judl.

**भारत सरकार सेवार्थ**  
**ON INDIA GOVERNMENT SERVICE**

**SPEED POST**

**Sender :**  
**Ministry of Law & Justice**  
**Department of Legal Affairs**  
**Receipt and Issue Section**  
**Shastri Bhawan, New Delhi-110 001**



F.No.12 (195)2020-Judl.  
Government of India  
Ministry of Law and Justice  
Department of Legal Affairs  
Judicial Section  
\*\*\*\*\*

Shastri Bhavan, New Delhi,  
Dated 26.07.2021

To

✓ The Honorable Denise Cote  
United States District Court for the Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, NY 10007-1312  
United States of America

Sub: Two Letters of Request dated August 13th 2020, from Hon. Denise Cote, Judge of the Southern District of New York for International Judicial Assistance Pursuant to the Convention of 18 March, 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters in the case of FTC and Another versus Vyera Pharmaceuticals LLC and another in Case No. 1:20-cv-00706-DLC – reg

Sir,

Kindly find enclosed Report from the Commissioner appointed by the Hon'ble High Court of Bombay, to record the evidence in the matter cited above as received through Prothonotary & Senior Master, High Court, O.S., Bombay. Evidence has been taken of Mr. Devang B Shah Director of Aadvighnesh Chem Pvt. Ltd. in place of Mr. Bipin C Shah.

2. It is requested that the above document may please be forwarded to the United States District Court for the Southern District of New York, USA.

Yours faithfully



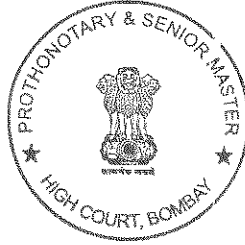
(L.C. Dabaria)

Assistant Legal Adviser (Judl.)

Encl: as above

Copy to:

1. Stacey Anne Mahoney, Morgan Lewis & Blockius, LLP, 101 Park Avenue, New York, NY 10178, United States of America.
2. Christopher H. Casey, Duane Morris LLP, 30, South Seventeenth Street, Philadelphia, PA 19103, United States of America
3. Anthony MacDonald Caputo, Kasowitz, Benson, Torres LLP, 1633 Broadway, New York, NY 10019, United States of America



Tel.: 22 2262 6581  
Email: [rgpsm-bhc@nic.in](mailto:rgpsm-bhc@nic.in)

No. PSM/ 2 /2021  
Dated 18<sup>th</sup> February, 2021.

From,  
Mahendra W. Chandwani  
Prothonotary & Senior Master,  
High Court, Bombay.  
Mumbai 400 032.

To,  
Shri L. C. Dabaria,  
Assistant Legal Advisor,  
Room No. -439 A, 4th Floor,  
A-Wing, Shastri Bhawan,  
New Delhi.

Sub : Commissioner Report.

Ref : Your letter No. 12(195)2020-Judl. Dtd. 14<sup>th</sup> October 2020.

Sir,


By your letter under reference, you had requested for issuing commission under the Hague Convention of 18<sup>th</sup> March, 1970.

Accordingly, Commissioner was appointed and commission is executed. The Commissioner has submitted his report on 15<sup>th</sup> February, 2021. I am forwarding herewith the said Report submitted by the Commissioner, as requested in letter under reference.

Kindly acknowledge the same by return letter.

Yours faithfully,

Encl.: a/a.

  
Prothonotary & Senior Master  
High Court, O.S., Bombay

  
809  
Dh.  
JTH

OFF: 76/80 TECHNO HERITAGE BUILDING, 2<sup>ND</sup> FLOOR, NAGINDAS MASTER ROAD, FORT, MUMBAI 23.

RES: 2/6 GANDHI BUILDING, AKURLI ROAD, KANDIVALI EAST, MUMBAI 400 101.

14<sup>th</sup> February 2021.

To,  
Mr. M. W. Chandwani,  
The Prothonotary & Sr. Master  
High Court, Bombay.

Dear Sir,

Re: United States District Court for the  
Southern District of New York  
Case No. 1: 20 -cv-00706-DLC  
Federal Trade Commission,  
State of New York,  
State of California,  
State of Illinois,  
State of North Carolina,  
State of Ohio,  
Commonwealth of Pennsylvania &  
Commonwealth of Virginia

...Plaintiffs

Vs

Vyera Pharmaceuticals, LLC,  
Phoenixus AG,  
Martin Shkreli,  
individually, as an owner and former  
Director of Phoenixus AG and a former executive of  
Vyera Pharmaceuticals, LLC & Kevin Mulleady,  
individually as owner and director of Phoenixus AG  
and a former executive of Vyera Pharmaceuticals, LLC.

... Defendants

By an administrative order passed by the Hon'ble Chief Justice, High Court Bombay, I was appointed Commissioner to record the evidence in the abovementioned matter as communicated to me by your letter dated 4<sup>th</sup> December 2020.

I am informed by Chitale & Chitale Partners Advocates for the Defendant No. 1 that the date for filing the report is 25<sup>th</sup> February 2021 and hence my report is in time.

I submit my report, which is self-explanatory.

Kindly acknowledge receipt for the same and oblige.

Thanking You,

Yours truly,



Mr. Kamal R. Khata  
Commissioner

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

Case No.1:20-cv-00706-DLC

Federal Trade Commission,

State of New York,

State of California,

State of Illinois,

State of North Carolina,

State of Ohio,

Commonwealth of Pennsylvania &

Commonwealth of Virginia

... Plaintiffs

VERSUS

Vyera Pharmaceuticals, LLC,

Phoenixus AG,

Martin Shkreli,

Individually, as an owner and former

director of Phoenixus AG and a former executive of

Vyera Pharmaceuticals, LLC & Kevin Mulleady,

individually as owner and director of

Phoenixus AG and a former executive of

Vyera Pharmaceuticals, LLC.

... Defendants

COMMISSIONERS REPORT

1. By a letter dated 4<sup>th</sup> December 2020, I was informed by the Prothonotary and Senior Master High Court Bombay Mr. M. W. Chandwani that I was appointed as a Commissioner for recording evidence in the aforesaid matter by an administrative order of the Hon'ble Chief Justice of the Bombay High Court pursuant to a Letter of Request received from the United States District Court for the Southern District of New York.
2. The said letter was received by my office on 8<sup>th</sup> December 2020.
3. I addressed an email to all the email addresses mentioned in paragraph 14 of the Letter of Request of the United States District Court for Southern District of New York on 12<sup>th</sup> December 2020.
4. By the said email dated 12<sup>th</sup> December 2020 I requested all the addressees to send me their WhatsApp numbers to enable me to form a group thereon for ease of communication. Only Mrs. Chitale and Mr. Joshi forwarded their WhatsApp numbers and I formed a group for ease of communication.
5. By their email dated 15<sup>th</sup> December 2020 addressed by Chitale & Chitale Partners Advocates for the Defendant No.1 they informed me that they will revert to me after taking instructions from their client.

6. Upon confirmation on the WhatsApp group We had a conference call on 5<sup>th</sup> January 2021 at 5 p.m. to decide on the course of action.
7. At the request of Mrs. Chitale, who forwarded the mobile number and email address of Mr. Bipin Chinubhai Shah, I emailed the Witness (Mr. Bipin Chinubhai Shah) on 2<sup>nd</sup> February 2021 informing him about the Letter of Request received from the Hon'ble High Court. I attached therewith a scanned copy of the letter dated 4<sup>th</sup> December 2020 received from the Prothonotary's office of the Hon'ble High Court for his information and record.
8. By a letter dated 4<sup>th</sup> February 2021, I was informed that Mr. Devang B Shah Director of Aadivighnesh Chem Pvt Ltd. would give evidence in place of Mr. Bipin C Shah. The consent of all concerned Advocates for substitution of witness was received by me orally. I have recorded the consent by my email dated 11<sup>th</sup> February 2021.
9. By consent of all concerned Advocates, 13<sup>th</sup> February 2021, between 5.30 to 8.30 p.m was fixed for recording of evidence at my residence as the there was no convenient venue available on the said date at such short notice. The witness was accordingly informed about the same.
10. As scheduled, the virtual meeting started at 5.30 p.m and continued upto 9.30 p.m. 1 hour beyond the scheduled time of 8.30 p.m. on 13<sup>th</sup> February 2021. The evidence was typed (by a stenographer appointed by me) as well as recorded on zoom by Chitale & Chitale Advocates for Defendant No. 1 (who had arranged for the virtual zoom meeting) as per the directions of the US District Court. The recording of evidence is complete.
11. I accordingly submit the following :
  - a) Examination in Chief and Cross Examination of the Defendant's Witness Mr. Devang Bipin Shah D.W.-1
  - b) Documents tendered by the Defendant's witness during cross examination marked DW-1/1 to DW-1/15
  - c) Documents tendered by Plaintiff's Advocate during cross examination marked P-1
  - d) Correspondence between the Advocates and myself.
12. I confirm and declare that in pursuance of the letter dated 4<sup>th</sup> December 2020, I have tried my level best to complete the recording of evidence at the earliest. I am informed today by Chitale & Chitale Advocates that the recording is to be completed and report to be filed by 25<sup>th</sup> February 2021. I am well within the stipulated time.

Place: Mumbai

Date: 14<sup>th</sup> February 2021.

*K.R. Khata*

Kamal Khata.

Commissioner.